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ATTORNEY FOR APPELLANT:

BERNICE A. N. CORLEY
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

GEORGE P. SHERMAN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ROGER STEWART,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0807-CR-651
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia J. Gifford, Judge
Cause No. 49G04-0710-FB-215893

February 26, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Roger Stewart appeals his conviction for Aggravated Battery, as a Class B felony, following a bench trial. Stewart raises a single issue for review, namely, whether the evidence is sufficient to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

In 2007, Stewart lived next door to Donald Bose in Indianapolis. In August, Stewart gave Bose $200 for crack cocaine. Bose did not supply the drug to Stewart and described the incident as a "bad deal." Transcript at 21. Stewart then moved away from Indianapolis to live with his father, but returned in September. On September 30, Bose visited his former Indianapolis residence, where he smoked crack with friends. He then visited his aunt's home for thirty minutes before returning to the former residence. A friend, Larry Thompson, asked Bose to drive him to the corner of Forest and New York to meet Stewart, and Bose agreed.

Upon arriving at the meeting place, Thompson left the vehicle to meet Stewart while Bose and a man named Brett waited in the car. When Thompson returned, he told Bose that Stewart was coming. Bose observed Stewart walking toward the car with one arm behind his back. As Bose opened his car door, Stewart ran toward Bose and stabbed him in the chest above the heart. Bose exited the car, became dizzy, and returned to the car. He drove a short distance before he crashed the car, crawled out into the street, and passed out.

The State charged Stewart with aggravated battery, as a Class B felony. Following a bench trial, the court found Stewart guilty as charged and entered a judgment of conviction accordingly. The court sentenced him to six years in the Department of Correction. Stewart now appeals.

DISCUSSION AND DECISION

Stewart contends that the evidence is insufficient to support his conviction for aggravated battery, as a Class B felony. When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Stewart contends that his conviction should be reversed. In particular, he argues that "[t]he uncorroborated testimony of the sole essential witness was so incredibly dubious due to the witness's chronic and ongoing use of crack cocaine and the inherent improbability of his version of the events, that it cannot support a finding of guilt beyond a reasonable doubt." Appellant's Brief at 4. Stewart refers to the parts of Bose's testimony that he deems to be incredible, but he provides no citations to the Appendix or the record in the argument section of his brief. As such, Stewart has waived the argument for review. See Ind. Appellate Rule 46(A)(8)(a) ("The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning.

Each contention must be supported by citations to . . . the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.”).

Waiver notwithstanding, we address the merits of Stewart’s claim that his conviction should be reversed under the incredible dubiosity rule. “The ‘incredible dubiosity’ doctrine applies ‘where a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant’s guilt.’” Baber v. State, 870 N.E.2d 486, 490 (Ind. Ct. App. 2007) (quoting Thompson v. State, 765 N.E.2d 1273, 1274 (Ind. 2002)), trans. denied. “‘Application of this rule is rare and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it.’” Id. (quoting Krumm v. State, 793 N.E.2d 1170, 1177 (Ind. Ct. App. 2003)).

Here, Stewart argues that Bose’s testimony is

> rife with inherent contradictions and curious omissions and, on the whole, is entirely improbable. He claims he left town after the “bad deal” and that Stewart had threatened to kill him yet he claims he voluntarily took Thompson and “Brett” to meet with Stewart to help Thompson sell food stamps to Stewart. Bose claims he was afraid of Stewart because he thought he had a gun as he approached the car yet he admits he got out of the car instead of trying to get away or lock the doors. Bose claims he and “Brett” sat in the car he had used to drive Thompson and “Brett” to the food stamp sale yet there is no explanation about what happened to Thompson or “Brett” (with whom he had spent the bulk of the night smoking crack and visiting a number of locations) during the fight nor are either of them anywhere to be found at the scene where Bose drove himself, crashed his car, and crawled out into the street to try to reach a phone booth after being stabbed.

Appellant’s Brief at 6. Stewart’s recitation of Bose’s testimony describes issues of fact regarding Bose’s motives and behaviors surrounding the stabbing and arguments

regarding Bose's credibility. Stewart also observes that "[t]he only issue in dispute in this case at trial was Stewart's claim that he acted in self-defense." Appellant's Brief at 5. But he does not point out inherent contradictions within Bose's testimony, nor does that testimony describe circumstances so inherently improbable that no reasonable person could believe it. See Baber, 870 N.E.2d at 490. Again, we will not reweigh the evidence or judge the credibility of the witnesses. Jones, 783 N.E.2d at 1139. Thus, Stewart's argument is without merit.

Stewart also points out that Bose, the only witness for the State, had admitted that he had been using crack regularly for approximately seven years and that he had used crack on the day Stewart stabbed him. But a conviction may be supported by the uncorroborated testimony of a single witness or by circumstantial evidence alone. McCarthy v. State, 749 N.E.2d 528, 538 (Ind. 2001). Presented only with the physical evidence and testimony by Stewart, Bose, and the police officer who had found the unconscious Bose after the incident, the trial court gave credit to Bose's testimony when it convicted Stewart. Again, we will not reweigh the evidence or judge Bose's credibility. See Jones, 783 N.E.2d at 1139. Stewart's claim must fail.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.